

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

THE UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
READY MIX CONCRETE, INC.

Plaintiff

vs

CIVIL 98-2235CCC

UNITED STATES FIDELITY & GUARANTY
COMPANY, THE ST. PAUL COMPANIES,
INC., RELIABLE MECHANICAL, INC.,
GALEAR, INC. and
JOHN DOES 1 THROUGH 25, INCLUSIVE

Defendants

RELIABLE MECHANICAL, INC.

Third-Party Plaintiff

vs

ARMANDO A. DIAZ-CRUZ

Third-Party Defendant

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U.S. DISTRICT COURT
SAN JUAN, P.R.

O R D E R

Having considered the Motion Under Rule 59(e) of the Federal Rules of Civil Procedure filed by third-party defendant Armando A. Diaz-Cruz (Diaz-Cruz) on April 25, 2002 (**docket entry 66**), which stands unopposed, the same is GRANTED. The sole issue with respect to arbitration between Reliable Mechanical, Inc. (RMI) and Diaz-Cruz as guarantor of subcontractor Galear, Inc. (Galear) is the site of arbitration: whether in Kentucky, U.S.A. or San Juan, Puerto Rico. We entered an Order on April 15, 2002 ordering Diaz-Cruz to submit the dispute between RMI and Galear/Diaz-Cruz to arbitration in Kentucky based on the subcontract between RMI and Galear dated November 9, 1995 and signed by the parties on January 8 and 9, 1996. This contract was submitted by RMI in support of its motion for summary judgment (**docket entry 42**). Upon reviewing the entire file and the contract submitted by Diaz-Cruz

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CIVIL 98-2235CCC

2

in support of his motion that arbitration be held in San Juan (**docket entry 66**), the Court determines that the sub-contract applicable to this case is the one between RMI and Galear dated November 18, 1996, not the November 9, 1995 sub-contract between the parties. The reason for this is that the plaintiffs' complaint against RMI, Galear and others was for United States contract number N62470-92-C-2060 NAVFAC specification number 05-92-2060. This is the same contract number identified in the November 18, 1996 sub-contract between RMI and Galear. Upon closer inspection, we have become aware that the November 9, 1995 sub-contract between RMI and Galear previously submitted by RMI refers to a different contract which number is N62470-94-C-4135.

Since the applicable sub-contract of November 18, 1996 for work on contract N62470-92-C-2060 modified Article 11.3 by virtue of the sub-contract clarification from Galear dated November 26, 1996, included as Exhibit L to the contract, to the effect that "any arbitration pursuant to this agreement will be held in San Juan, Puerto Rico," it is hereby determined that RMI, Galear and Díaz-Cruz shall submit to arbitration in San Juan, Puerto Rico, as agreed to in the sub-contract dated November 18, 1996, within the final term of twenty (20) days after notice.

SO ORDERED.

At San Juan, Puerto Rico, on August *27*, 2002.

[Signature]
CARMEN CONSUELO CEREZO
United States District Judge

s/cs:to (3)
attys/pts
in ICMS

AUG 29 2002

[Signature]